

# State of California

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## Legislative Change No.

**00-08**

Bill Number: AB 511

Author: Alquist, et. Al. Chapter Number: 00-107

Laws Affecting Franchise Tax Board:

Revenue and Taxation Code Sections 17052.12,  
17053.80, 17151, 17276, 23609 and 24416

Date Filed with the Secretary of the State: July 10, 2000

**SUBJECT:** Research Credit/Increase Qualified Expense to 15% & Alternative Incremental Expense to 90% of Federal/Long-Term Caregiver Credit/Exclusion/Education Assistance/Graduate Courses/NOL Deduction Carryover/65% Allowed for 10 Years

**Assembly Bill 511 (Alquist, et. Al.), as enacted on July 10, 2000, made the following changes to California law:**

Sections 17052.12 and 23609 of the Revenue and Taxation Code are amended.

This act increases the state credit for "qualified research expenses" from 12% to 15%.

This act also increases the state alternative incremental research expense credit from 80% to 90% of the prior federal credit amount. Thus, the prior federal percentages of 1.65%, 2.2%, and 2.75% are replaced with 1.49%, 1.98%, and 2.48%, respectively.

Section 17053.80 of the Revenue and Taxation Code is added and repealed.

This act provides a \$500 non-refundable long-term caregiver credit for each applicable individual for whom the taxpayer provides long-term care. An applicable individual may be the taxpayer, spouse of the taxpayer, or a qualifying dependent who has been certified to have long-term care needs.

For purposes of this credit, this act broadens the definition of a dependent (IRC Section 152/RTC Section 17056) in two ways. First, the gross income threshold test increased to the sum of the federal personal exemption amount, the federal standard deduction, and the additional federal deduction for the elderly and blind (if applicable). In 1999, the gross income threshold would generally be \$7,050 for a non-elderly dependent and \$8,100 for an elderly or blind dependent. The threshold amounts are calculated using the federal amounts.

Second, the support test is deemed met if the taxpayer and an individual with long-term care needs reside together for a specified period. The length of the specified period depends on the relationship between the taxpayer and the individual with long-term care needs. The specified period is over half the year if the individual is an ancestor or descendant of the taxpayer or the taxpayer's spouse. Otherwise, the specified period is the full year.

Bureau Director

Johnnie Lou Rosas

Date

07/18/2000

If more than one taxpayer is an eligible caregiver for the same person with long-term care needs, then those taxpayers generally must designate the taxpayer who would claim the credit. If the taxpayers fail to do so or if they are married to each other and filing separate returns, then only the taxpayer with the higher modified federal AGI is eligible to claim the credit.

Under this act, an individual age six or older is considered to have long-term care needs if he or she were certified by a licensed physician (prior to the filing of a return claiming the credit) as being unable for at least six months to perform at least three ADLs without substantial assistance from another individual due to a loss of functional capacity (including individuals born with a condition that is comparable to a loss of functional capacity).

A child between the ages of two and six is considered to have long-term care needs if he or she were certified by a licensed physician as requiring substantial assistance for at least six months with at least two of the following activities: eating, transferring, and mobility.

A child under the age of two is considered to have long-term care needs if he or she were certified by a licensed physician as requiring for at least six months specific durable medical equipment (for example, a respirator) by reason of a severe health condition or requiring a skilled practitioner trained to address the child's condition when the parents are absent.

As under the present-law rules relating to long-term care, ADLs would be eating, toileting, transferring, bathing, dressing, and continence.

As an alternative to the 3-ADL test described above, an individual is considered to have long-term care needs if he or she were certified by a licensed physician as (a) requiring substantial supervision for at least six months to be protected from threats to health and safety due to severe cognitive impairment and (b) being unable for at least six months to perform at least one or more ADLs or to engage in age appropriate activities as determined under regulations prescribed by the Franchise Tax Board (FTB) in consultation with the Secretary of Health and Welfare Agency.

This act provides that a portion of the period certified by the physician must occur within the taxable year for which the credit is claimed. Individuals must be certified by their physician within the thirty-nine and one-half month period before the due date of the return, or such other period as the FTB prescribes.

This act requires the taxpayer to provide a correct taxpayer identification number for the individual with long-term care needs for which the credit is claimed as well as a correct physician identification number for the certifying physician on the tax return. Failure to provide correct taxpayer and physician identification numbers is subject to the mathematical error rule. Under that rule, the FTB may deny the credit and summarily assess additional tax due without sending the individual a notice of proposed assessment. Further, the taxpayer could be required to provide the physician certification upon the FTB's request.

This act provides that no credit would be allowed to eligible caregivers with AGI of \$100,000 or more.

The provision remains in effect until December 1, 2005, when it is repealed.

Section 17151 of the Revenue and Taxation Code is amended.

This act allows an employee to exclude from gross income the amount that an employer pays or incurs, up to \$5,250, for the employee to take graduate level courses in pursuit of a law, business, medical, or other advanced academic or professional degree. This exclusion applies to any course or education taken at the graduate level beginning on or after January 1, 2000.

Sections 17276 and 24416 of the Revenue and Taxation Code are amended.

This act incrementally increases the current 50% carryforward of the NOL deduction as follows:

- ?? For taxable and income years beginning on or after January 1, 2000, and before January 1, 2002, 55% of the NOL may be carried forward.
- ?? For taxable and income years beginning on or after January 1, 2002, and before January 1, 2004, 60% of the NOL may be carried forward.
- ?? For taxable and income years beginning on or after January 1, 2004, 65% of the NOL may be carried forward.

This act increases the NOL carryforward period from the current five years to 10 years for all NOLs generated for taxable and income years beginning on or after January 1, 2000.

This act retains preferential NOL treatment for new and small businesses by also increasing the percentage of NOL carryforward to 55%, 60%, and finally 65% (following the same date increases as above) for the NOL amount that exceeds the net "new business" or "eligible small business" NOL. This act also increases the carryforward for "new businesses" from eight years to 10 years.

This act is effective July 10, 2000, and unless otherwise stated, is operative for taxable or income years beginning on or after January 1, 2000.

This act will not require any reports by the department to the Legislature.